



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON, D.C. 20370-5100

TRG

Docket No: 1200-99

16 November 2000

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 14 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by Headquarters Marine Corps, dated 4 June 1999, a copy of which is enclosed.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection the Board substantially concurred with the comments contained in the advisory opinion.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1070

JAM4

04 JUN 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF FORMER [REDACTED]
[REDACTED] U.S. MARINE CORPS RESERVE

Ref: (a) Manual for Courts-Martial, United States (1995
Edition), Part V

1. We are asked to provide an opinion regarding Petitioner's request that his nonjudicial punishment (NJP) of 1 December 1995 be set aside and all references to the NJP be removed from his official military records. Petitioner also requests removal of records of his Board of Inquiry (BOI) and upgrade of the characterization of his service to Honorable.

2. We recommend that relief be denied. Our analysis follows.

3. Background

a. In August 1995, Petitioner danced provocatively with the wife of another Marine Corps officer, made sexually suggestive comments to her, and arranged meetings with her when her husband was in the field or on duty. In September 1995, Petitioner made false statements about his conduct to the Marine Corps officer investigating the events. On 1 December 1995, Petitioner was the subject of NJP proceedings resulting in the imposition of a punitive letter of censure. Both Petitioner's appeal and request for reconsideration of the NJP were denied.

b. The same conduct resulting in the NJP led to convening of a Board of Inquiry to consider whether Petitioner should be involuntarily separated from the Marine Corps. On 11 June 1996, the BOI recommended Petitioner be separated from the Marine Corps with a General (under Honorable Conditions) characterization of service. The Secretary of the Navy approved the findings and recommendation of the BOI, and Petitioner was separated from the Marine Corps on 14 March 1996.

4. Analysis

a. Petitioner argues that he was not provided his "Miranda" warning prior to making statements that were the subject of his false statement to the investigating officer. He also claims that his conduct toward the wife of a fellow Marine Corps

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[REDACTED] U.S. MARINE CORPS RESERVE

officer, while inappropriate, did not amount to conduct unbecoming of an officer and a gentleman. Both Petitioner's arguments are without merit.

b. Under the reference, the NJP authority may impose punishment when he believes the preponderance of the evidence establishes the accused committed the offense charged. Absent clear evidence of an abuse of discretion, the NJP authority's findings should remain undisturbed. The fact that Petitioner disagrees with the evidence or its import does not amount to an abuse of discretion. Petitioner's present application offers no evidence that has not previously been considered and rejected by the NJP and NJP appeal authorities. Furthermore, the punishment Petitioner received, a punitive letter of censure, was well within legal limits.

c. Petitioner's claims regarding the alleged violation of his rights under Article 31, UCMJ,¹ are contradicted by Captain Sweitzer's testimony at the NJP proceeding. The NJP and appeal authorities rejected Petitioner's version of events, as they may in their discretion. Had Petitioner desired to fully litigate this issue, he should have exercised his right to demand trial by court-martial.

d. Petitioner's claims that his behavior did not amount to "conduct unbecoming" must also fail.

(1) Under paragraph 59c(2), Part IV, of the reference, "conduct unbecoming" includes

action or behavior in an unofficial or private capacity which, in dishonoring or disgracing the officer personally, seriously compromises the person's standing as an officer. There are certain moral attributes common to the ideal officer and the perfect gentleman, a lack of which is indicated by acts of dishonesty, unfair dealing, indecency, indecorum,² lawlessness, injustice or cruelty.

¹Although Petitioner refers to "Miranda" in his filings with BCNR, we presume he intended to refer to Article 31, UCMJ. Petitioner's raised the issue of potential Article 31 violations (not "Miranda") during his NJP proceedings.

²Webster's II New Riverside University Dictionary (1984), p. 621, defines "indecorous" behavior as "lacking in good taste or propriety."

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(2) This paragraph of the reference also indicates that assessing whether the conduct is "unbecoming" requires consideration of all the surrounding circumstances.

(3) The records reveal that the command thoroughly investigated this incident. The evidence presented, considering all the surrounding circumstances, fully supports the imposition of NJP and Petitioner's separation from the Marine Corps with a General (under Honorable Conditions) characterization of service. It was inappropriate for Petitioner to take advantage of the fact that one of his fellow Marine Corps officers was on duty or in the field to make advances on that officer's wife. It was also inappropriate to dance in a sexually provocative manner with that officer's wife. Such conduct certainly compromised Petitioner's standing as an officer among his peers and likely had a divisive and demoralizing effect on the command. At a minimum, Petitioner's conduct was lacking in good taste or propriety. Petitioner himself admits his conduct was inappropriate. Accordingly, we find Petitioner's conduct amounted to "conduct unbecoming an officer and a gentleman" in violation of Article 133, UCMJ.

5. Conclusion. We find no error or injustice in Petitioner's nonjudicial punishment and separation from the Marine Corps with a General (under Honorable Conditions) characterization of service. Accordingly, Petitioner's request for relief should be denied.

M. W. Fisher, Jr.

M. W. FISHER, JR.
Head, Military Justice Branch
Judge Advocate Division